



COMMISSIONER'S DIRECTIVE #51
JANUARY 2016
Effective Date: January 1, 2016 (retroactive)

SUBJECT: Tax Withholding for Race Teams

REFERENCES: IC 5-1-17.5-42; IC 6-3-2-3.2; IC 6-3-1-12

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY

This directive provides guidance regarding the withholding requirements with respect to prize winnings and other payments for motorsports teams. Other than nonsubstantive changes, the revisions from the previous version clarify the scope of prize money, clarify the definition of race team members, reflect the discontinuance of the Form WH-18 and clarify treatment for employees residing in states with reciprocal income tax agreements.

DEFINITIONS

"Prizes" shall mean any purse, prize, or other amounts earned for placement or participation in a race or portion thereof, provided that the race occurs in Indiana. For purposes of this directive, if money or other consideration is paid based on the participation in, or obtaining an aggregate finish over (e.g., points during a NASCAR or IndyCar season), a series of races, the portion of the money or other consideration attributable to Indiana shall be equal to the number of races in which a driver or team participated in Indiana divided by the total number of races in which that driver or team participated in all jurisdictions.

"Bonus" shall mean:

- (1) a bonus earned as a result of participation in a racing event, such as a performance bonus or any other bonus; and
- (2) a bonus paid for signing a contract, unless all of the following conditions are met:
 - (i) The payment of the signing bonus is not conditional upon the signer participating in a racing event for the team or performing any subsequent services for the team.

- (ii) The signing bonus is payable separately from the salary and any other compensation.
- (iii) The signing bonus is nonrefundable.

“Total income” means the total compensation received during the taxable year for services rendered. The term includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a race team member for services rendered in that year. The term does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the race team.

“Indiana duty days” means the number of total duty days spent by a race team member within Indiana rendering a service for the race team in any manner during the taxable year, except travel days spent in Indiana that do not involve either a race, practice, qualification, training, testing, team meeting, promotional caravan, or other similar race team event. For purposes of determining the location of duty days, all Indiana activities associated with an Indiana race shall be considered to occur at the location of the Indiana race. For other racing-related activities such as testing at an Indiana race track, all Indiana activities shall be considered to occur at the location of the Indiana race track at which such activities occur.

“Total duty days” means all days during the taxable year that a race team member renders a service for the race team. The term includes:

- (1) race days, practice days, qualification days, training days, testing days, days spent at team meetings, days spent with a promotional caravan, and days served with the team in which the team competes or is scheduled to compete;
- (2) days spent conducting training and rehabilitation activities, but only if the service is conducted at the facilities of the race team; and
- (3) travel days that do not involve either a race, practice, qualification, training, testing, team meeting, promotional caravan, or other similar team event.

Total duty days for an individual who joins a race team during the season begin on the day the individual joins the team, and, for an individual who leaves a team, end on the day the individual leaves the team. When an individual changes teams during a taxable year, a separate duty day calculation must be made for the period the individual was with each team. Total duty days do not include those days for which a team member is not compensated and is not rendering a service for the team in any manner, including days when the team member has been suspended without pay and prohibited from performing any services for the team.

“Race team” includes a professional motorsports racing team that has services rendered by a race team member in Indiana or participated in a racing event at a qualified motorsports facility (as defined in IC 5-1-17.5-14).

“Race team member” includes employees or independent contractors who render services on behalf of the race team. The term includes, but is not limited to drivers, pit crew members,

mechanics, technicians, spotters, crew chiefs, and any other individual whose activities directly impact the race car during a race, practice, qualification, training, and testing.

WITHHOLDING REQUIREMENTS-PRIZE MONEY

For any entity paying prizes based on an event conducted in a motorsports investment district (currently limited to the Indianapolis Motor Speedway), whether a race operator, a race track, a race team, or any other person or entity, the entity shall withhold a portion of the prize money remitted to any person or entity. This applies whether the actual entity paying the prize money is domiciled in the district or outside the district. For the first payment of prize money to any person or entity, tax shall be withheld at the Indiana individual income tax rate. For 2015 and 2016, this rate is 3.3 percent (3.3%), and for 2017 and later, this rate is 3.23 percent (3.23%). However, payments of ordinary business expenses (e.g., employee salaries, overhead expenses, etc.) from prize money shall not be considered the payment of prize money by that entity.

Any withholding for prize money shall be reported by the first entity paying prize money subject to withholding during any period for which it pays prize money. Each person or entity responsible for withholding shall establish a withholding account for purposes of reporting prize money. If an entity already has established one or more withholding accounts, the entity shall establish a separate withholding account for reporting prize money. The person or entity shall report the withholdings on a Form WH-1. The person or entity shall issue a Form 1099 for purposes of reporting any tax withheld by it.

If a person or entity has had prize money withheld on its behalf, that person or entity must provide evidence of the tax withholding. For the person or entity on whose behalf the money was withheld directly (for instance, a track paying to a race team), that entity must include the Form 1099 reporting the withholding by the payor. For any other person or entity claiming a credit for withholding on prize money, that person or entity must provide any Form K-1s, Form 1099, or any other tax form reflecting the taxes claimed to be paid on behalf of the person or entity and sufficient to permit the department to trace the taxes credited through all payors.

If any entity responsible for withholding does not have an Indiana withholding account, it must open an account with the department. This can be done online through the department's INTax program, available online at www.intax.in.gov.

If an entity responsible for withholding already has an Indiana withholding account used for other non-prize money purposes, it must open a separate account with the department for purposes of filing and remitting withholding on prizes.

Nothing in these withholding requirements is intended to relieve any entity from other tax withholding requirements imposed by other provisions of Indiana law.

EXAMPLE 1:

Indianapolis Motor Speedway ("Race Track") pays Race Promoter \$1,000,000 as a prize for a race in Indiana. Race Track shall withhold 3.3% of the \$1,000,000 paid (3.23% in

2017 and later) to Race Promoter. Race Track shall remit the tax withheld on the return for the month in which the prize money is paid. Race Track shall issue a Form 1099 to Race Promoter reporting the \$1,000,000 in prize money paid and the tax withheld.

EXAMPLE 2:

From the \$1,000,000 paid in Example 1, Race Promoter pays \$800,000 in prize money to Race Team A. Race Promoter is not required to withhold on the \$800,000 if the money was previously withheld on Race Promoter's behalf (see Example 1 above). However, Race Team A must provide a Form K-1 (or other appropriate tax form such as a Form 1099) reflecting any taxes paid on Race Team A's behalf and a copy of the Form 1099 issued to Race Promoter reflecting the withheld taxes. Race Promoter shall NOT reflect the tax withheld by Race Track on any Form 1099 issued to Race Team A or on any WH-1 filed by Race Promoter.

EXAMPLE 3:

From the \$800,000 in Example 2, Race Team A pays \$400,000 in prize money to Race Subteam B on July 1 and \$200,000 in prize money on December 30. Race Team A is not required to withhold taxes if taxes were previously withheld on the prize money. However, Race Subteam B must provide a Form K-1 (or other appropriate tax form such as a Form 1099) reflecting any taxes paid on Race Subteam B's behalf and a copy of the Form 1099 issued to Race Promoter and/or Race Team A reflecting the withheld taxes. Race Team A shall NOT report any taxes on the Form 1099 or WH-1 that reflect taxes withheld by Race Track and/or Race Promoter.

WITHHOLDING REQUIREMENT—COMPENSATION, SALARY, AND/OR BONUSES

Any payment of compensation, salary and/or bonuses by an employer or race team (hereinafter referred to as "employer") to a nonresident race team member shall have tax withheld on the Indiana portion of the income. This withholding shall apply regardless of the status of the race team member as an independent contractor, employee, or other designation. The Indiana portion of the income shall be equal to:

Total income for the year (as defined above) times Indiana duty days divided by total duty days.

The amount to be withheld should be computed based on the instructions provided in Departmental Notice #1, available at www.in.gov/dor/reference/files/dn01.pdf. If the total income for the year cannot be readily determined at the time of the race, an entity paying income to a race team member shall determine the Indiana income subject to withholding by taking the total income paid to the race team member for the period(s) in which the race team member was performing services, multiplying that by the number of days working in Indiana during the period(s), then dividing by the number of days worked everywhere during the period(s). The proration of income shall be based on the period in which the services are performed, rather than the period in which the compensation is paid.

If the race team member is an employee of the race team and is a resident of a state with a reciprocal income tax agreement with Indiana, the race team member's wages are not subject to state income tax withholding. Other payments (e.g., payments as a contractor) are still subject to withholding by the race team. Currently, the states with reciprocal income tax agreements with Indiana are Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin.

In each of the next three examples, assume the race team member resides outside Indiana and is not subject to a reciprocal income tax agreement with Indiana.

EXAMPLE 4:

A race team member earns \$50,000 in 2014. The race team member has five duty days in Indiana in 2014 and 100 total duty days. The race team's withholding on behalf of the race team member shall be based on \$50,000 times five Indiana duty days divided by 100 total duty days, or \$2,500.

EXAMPLE 5:

A race team member earns \$5,000 for a two-week period beginning May 15 and ending May 28. The team member has five Indiana duty days and eight total duty days during the period. The race team cannot determine the exact number of duty days the team member will work during the year. The withholding shall be based on \$5,000 times five Indiana duty days divided by eight total duty days, or \$3,125. This withholding shall be reported during the month the payment is made to the team member, even if the payment month is different than the months in which the race member performs services.

EXAMPLE 6:

A race team member earns \$40,000 during the course of the year prior to December. The race team member has five duty days in Indiana in 2014 and 100 total duty days and had \$2,000 withheld on the amounts previously earned. In December, the race team member receives a \$10,000 bonus. The bonus is considered compensation subject to withholding. The \$10,000 bonus is subject to withholding based on \$10,000 times five Indiana duty days divided by 100 total duty days, or \$500. This withholding is in addition to the previous withholding.

Any tax withheld on behalf of Indiana shall be reported and remitted to the department on a monthly basis unless the race team is allowed to report as a seasonal return filer. Any tax withholding should be reported on Form WH-1 by the employer. If the employer files a separate Form WH-1 for each Indiana location, these taxes should be reported for any location corresponding to the location of the race. If an employer files a single Form WH-1 for all Indiana locations, the taxes should be reported on that Form WH-1.

If any income is reported on a federal Form W-2, that federal Form W-2 is sufficient for reporting the Indiana portion of the total income. If any income is not reported on a federal Form

W-2 (for instance, the team member is an independent contractor), the employer should provide the team member with a Form 1099. The Form 1099 should report all Indiana income and the tax withheld on that income.

The withholding instructions set forth herein are applicable only to nonresidents and only to the extent the team member derives income. For purposes of withholding on residents, Indiana law governing withholding of Indiana state and county income tax shall otherwise apply. Also, if a team member is otherwise subject to tax withholding for nonresident partners, S corporation shareholders, trust beneficiaries, any Indiana employment other than as a member of a race team, or any other provision under Indiana law (including prize money withholding discussed previously), those tax withholding rules shall apply to the extent the team member derives Indiana income from these sources.

EXAMPLE 7:

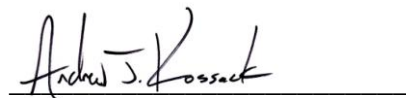
A race team member earns \$50,000 in 2014. The race team member has five duty days in Indiana in 2014 and 100 total duty days. The race team member resides in Indiana and is otherwise considered an employee for state and federal tax withholding purposes. The race team's withholding on behalf of the race team member shall be based on \$50,000, regardless of any proration for duty days inside and outside Indiana.

EXAMPLE 8:

A nonresident race team member also owns an interest in an S corporation. The race team's withholding for the race team member's duty days shall be computed according to the guidelines set forth in this directive. Any nonresident shareholder withholding for the race team member shall be determined pursuant to Indiana statutes and any guidelines set forth by the department that apply generally to nonresident S corporation shareholders.

Each employer shall provide information to team members sufficient to determine each team member's Indiana income and the portion attributable to activities during motorsports events. This form will be available online at the department's website. This information shall include the team member's name, social security number, total compensation, Indiana duty days, and total duty days. Substantiation of duty days must be provided upon the request of the department.

If a race team is not otherwise subject to Indiana employee tax withholding AND would have less than \$1,000 in Indiana income subject to withholding based on this directive, the race team will not be required to withhold taxes for its team members in their capacity as team members. However, this shall not relieve the race team from other withholding, filing, and tax payment provisions arising under Indiana law.



Andrew Kossack
Commissioner